

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 CS

Outdoor Advertising

SPONSOR(S): Mayfield

TIED BILLS:

IDEN./SIM. BILLS: SB 566(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	11 Y, 2 N	Pugh	Miller
2) Local Government Council	8 Y, 0 N, w/CS	Smith	Hamby
3) State Infrastructure Council		Pugh	Havlicak
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 479, F.S., regulates billboards and other forms of outdoor advertising signs. Advertising companies and other owners of outdoor signs must be licensed by the Florida Department of Transportation (FDOT) and obtain permits that regulate height, size and other characteristics of the billboards. County and municipal governments are not precluded from enacting local ordinances regulating outdoor advertising, but these regulations must be in harmony with state and federal requirements.

HB 273 w/CS makes significant changes to two sections of law in chapter 479, F.S. The bill:

- Establishes "view zones" along the public rights of way of interstates, expressways, federal-aid primary highways and the State Highway System in the state, excluding privately owned property.
- Allows FDOT and sign owners to enter into agreements identifying the specific location of a billboard's view zone, meaning an unobstructed view by passing motorists.
- Specifies in statute the standard dimensions of a view zone.
- Prohibits trees and other vegetation that are part of a beautification project from being planted in a billboard's view zone.
- Requires any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of either lost revenue because the sign was blocked or the sign's fair market value, and provide exemptions from such payment requirements.
- Allows the owner of a lawfully erected billboard that conforms to state and federal requirements for land-use, size, height, and spacing to elevate the billboard at its permitted location if a sound wall blocks or screens the signage.
- Specifies that a billboard reconstructed so it can be raised above a sound wall must comply with the Florida Building Code standards and wind load requirements.
- Provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations. One of the options is prohibiting FDOT from building a sound wall if it would necessitate allowing a billboard owner to raise his sign in violation of a local ordinance or regulation.
- Specifies that this act does not apply to any existing settlement agreement between any local government and the owner of an outdoor advertising sign.

HB 273 w/CS raises no apparent constitutional issues. The bill has no immediate financial impact on the state or on local governments, and will not fiscally impact these governmental entities unless they refuse to allow the specified view zones and increases in sign height, and are required to pay penalties or compensation to the sign owners. However, FDOT is concerned that it could lose an indeterminate amount of federal transportation funding if it is not allowed to build sound walls where necessary and as required by the Federal Highway Administration to meet noise abatement standards.

HB 273 w/CS takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/9/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government/Safeguard Individual Liberty** – HB 273 w/CS prohibits trees and other vegetation that are part of a “beautification project” from being planted in a legally erected and permitted billboard’s view zone. The bill requires any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of lost revenue because the sign was blocked or the sign’s fair market value, and provides exemptions from such payment requirements. Additionally, the bill allows the owner of a lawfully erected billboard conforming to state and federal requirements for land use, size, height, and spacing, to increase the billboard’s height at its permitted location if a noise wall blocks or screens the signage. The bill provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations including the issuance of a permit by variance.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Florida has an estimated 20,900 permitted outdoor advertising signs on 13,700 billboard structures. About 5,900 are considered by FDOT as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but are not in compliance with current regulations.

Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by FDOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify FDOT’s duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal-aid primary highway system, which includes state roads. The chapter also addresses ways to accommodate billboard owners whose signs’ “view zones” are affected by highway beautification projects, such as planting of vegetation, and highway widening or other improvements.

Because federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965 (chapter 23 U.S. Code section 131), chapter 23 Code of Federal Regulations section 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- To be able to remain, nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming.
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable.
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortious acts.
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation.
- However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

Under state law, local governments also may not remove, or order to be removed, lawfully erected signs along the interstate or federal-aid highways without paying the signs’ owners just compensation.

A March 2005 memorandum from the FHWA addressed a relatively new issue relating to nonconforming signs – conflicts between sign owners and state transportation agencies over noise-attenuation barriers (or “sound walls”) along highways that are blocking billboards. The memorandum concluded that allowing owners of non-conforming billboards to increase the signs’ height in such circumstances is inconsistent with federal law and regulations.<sup>1</sup>

Current state law clarifies that nothing in chapter 479, F.S., prevents FDOT or other governmental entities from entering into an agreement with a sign owner increasing the height of a lawfully erected sign at its permitted location if a noise-attenuation barrier, visibility screen, or other highway improvement is erected in such a way as to screen or block the sign’s visibility. Under such agreements, the affected sign’s height can be increased only as much as is necessary to achieve the same degree of visibility from the road as it had previously. If the affected sign is non-conforming and it is located along a federal aid primary highway system (which includes most of Florida’s major highways), the FHWA must approve the agreement – a provision in conflict with the aforementioned FHWA memorandum.

### Effect of Proposed Changes

HB 273 w/CS amends two sections of chapter 479, F.S., related to visibility and height of lawfully permitted billboards.

Specifically, the bill amends s. 479.106, F.S., to:

- Establish “view zones,” which are unobstructed views of billboards by passing motorists, along the public rights-of-way of interstates, expressways, federal-aid primary highways and the State Highway System, excluding privately owned property.
- Specify in statute the standard dimensions of a view zone. Along public rights-of-way where the posted speed limit is no more than 35 miles per hour, the view zone is 350 feet. But the view zone is 500 feet where the posted speed limit is greater than 35 miles per hour. These view zones must be within the first 1,000 feet as measured along the pavement’s edge in the direction of oncoming traffic, from a point on the edge of the pavement perpendicular to the billboard sign’s edge that is facing the highway.
- Allow FDOT and sign owners to enter into agreements identifying the specific location of a billboard’s view zone, Prohibit trees and other vegetation that are part of a beautification project from being planted in a billboard’s view zone.
- Require any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of either lost revenue because the sign was blocked or the sign’s fair market value, and provide a 90-day written notice to the sign owner of a violation regarding the view zone and no penalty will be assessed if the alleged violation is cured within a 90-day period.
- Eliminate the need for additional FDOT permits if 48-hour notice is given to FDOT for corrective action of any modifications or removal of material within a beautification project or other planting by the governmental entity or other party.
- Provide protection from penalties to landscape architects and other persons licensed under Part II, ch. 481, F.S.

The bill amends s. 479.25, F.S., to:

- Allow the owner of a lawfully erected billboard that conforms to state and federal requirements for land use, size, height, and spacing to elevate the billboard at its permitted location if a sound wall blocks or screens the signage.
- Delete references to the Federal Highway Administration’s approval before raising the height of a non-conforming billboard along a federal-aid primary highway. This reflects the 2005 policy memorandum issued by FHWA on the issue.

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<sup>1</sup> U.S. DOT /FHWA memorandum from Susan Lauffer, director of Office of Real Estate Services to Division Administrators and Directors of Field Services, dated March 8, 2005.

- Specify that a billboard reconstructed so it can be raised above a sound wall must comply with the Florida Building Code standards and wind load requirements.
- Provide local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations being: 1.) to issue a permit by variance; 2.) allow relocation of the sign; 3.) refuse to issue the permit and pay fair market of the sign and its associated interest in the real property to the sign owner; and 4.) local governments can prohibit the erection of a sound wall or noise barrier by the FDOT, to the extent that it blocks the sign.

The bill also specifies that this act does not apply to any existing settlement agreement between any local government and the owner of an outdoor advertising sign.

HB 273 w/CS takes effect upon becoming law.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 479.106, F.S. to specify view-zone dimensions and method for determining the view zone. Specifies penalties. Provides exemptions.

**Section 2:** Amends s. 479.25, F.S., to clarify under what circumstances lawfully erected, conforming billboards may be raised. Deletes obsolete language. Provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations.

**Section 3:** Provides this act does not apply to any existing settlement agreement between any local government and the owner of an outdoor advertising sign.

**Section 4:** Specifies this act shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

No immediate impact. But see "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

D. FISCAL COMMENTS:

In the event FDOT or a local governmental entity violates the proposed view zone provisions in s. 479.106, F.S., it would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard or the fair market value of the sign.

Additionally, the bill provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations:

- Issue a permit by variance;
- Allow relocation of the sign;
- Refuse to issue the permit and pay fair market of the sign and its associated interest in the real property to the sign owner; and
- Prohibit FDOT from building the sound wall, to the extent that it blocks the sign.

A governmental entity violating these provisions also may have to pay legal costs and expenses if the issue is litigated.

FDOT has expressed concerns that the fourth option could potentially cost the agency federal transportation funds programmed to build or improve roads where sound walls are required to meet federal traffic noise-abatement standards.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable, because HB 273 w/CS does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Other Comments**

Resolution 2005-1521-A, regarding Outdoor Advertising and Highway Beautification, was passed unanimously by the Jacksonville City Council on December 13, 2005 and signed by Mayor Peyton on December 19, 2005. This resolution opposes HB 273 and SB 566.<sup>2</sup>

Resolution No. 2006-12, regarding Outdoor Advertising and Highway Beautification, was passed and adopted by the City of Clearwater on January 19, 2006 and signed by Mayor Hibbard. This resolution opposes HB 273 and SB 566.<sup>3</sup>

Mr. Ken Towcimak, Director, Florida Department of Transportation, submitted the following statement regarding the "option 4:"

"[Lines 115-133 of the bill] allows local governments four (4) options if the Department intends to construct a sound attenuation wall on its rights of way, and if the wall will screen an outdoor advertising sign from view, and if the local government has an ordinance in place which precludes a screened outdoor advertising sign from being increased in height so as to be seen above the wall.

<sup>2</sup> See Resolution from Tracey Arpen, Office of General Counsel, City of Jacksonville, Florida (December 29, 2005) (on file with House of Representatives, Local Government Council).

<sup>3</sup> See Resolution from Bill Jonson, Vice-Mayor, City of Clearwater, Florida (January 19, 2006) (on file with House of Representatives, Local Government Council).

The Department must object to the fourth option [lines 124-133 of the bill] which provides that if the local government will not issue a variance from the sign height ordinance, then the local government may prohibit the Department's installation of the noise attenuation wall.

Noise walls constructed on the National Highway System, which includes Interstate Highways, must comply with regulations promulgated by the Federal Highway Administration. Such regulations specify that the wall must be installed if approved by the property owners directly impacted by the highway noise (receptors). If such impacted individuals approve the installation of the wall, and if the wall meets other technical and cost criteria, then the Department must construct the wall. The local government may not "veto" such installation on DOT rights of way.

Also, please note that the Department has previously purchased all rights of "view" to the Interstate Highway System from adjacent land, giving the Department the right to construct any necessary improvements on its rights of way."<sup>4</sup>

FDOT has drafted an amendment to address its concerns, and is continuing its discussions with the bill sponsor and the bill's supporters.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

##### **Local Government Council**

The Council on Local Government adopted four amendments on February 22, 2006. Briefly:

- Amendment #1 clarifies that the changes to s. 479.106, F.S., do not apply to private property owners; provides for a shorter view zone for posted speed limits of 35 mph or less; clarifies that the bill pertains to the public rights of way of interstates, expressways, federal-aid primary highways and the State Highway System instead of a 'view zone of the State Highway System and expressways.'
- Amendment #2 provides a 90-day written notice by the sign owner of a violation regarding the view zone and provides no penalty will be assessed if the violation is cured within the 90 day period; removes the need for additional DOT permits (if 48-hours notice is given) for corrective action of any modifications or removal of material within a beautification project or other planting by the governmental entity or other party; and provides protection from penalties to persons licensed under ch. 481, F.S.
- Amendment #3 provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations being: 1.) to issue a permit by variance; 2.) allow relocation of the sign; 3.) refuse to issue the permit and pay fair market value of the sign and its associated interest in the real property to the sign owner; and 4.) prohibit the installation of the noise barrier to the extent that it blocks the sign.
- Amendment #4 clarifies that this act will not negate any existing settlement agreements between local governments and owners of outdoor advertising signs.

The bill, as amended, was reported favorably with council substitute.

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<sup>4</sup> See e-mail from Ken Towciamk, Director, Florida Department of Transportation, (February 22, 2006) (on file with House of Representatives, Local Government Council).